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LAW CENTER

Supreme Court expands review of U.S. war on terror

Case of U.S.-born man captured in Afghanistan increases scrutiny of Bush policies

Friday, January 9, 2004 Posted: 2136 GMT (5:36 AM HKT)

WASHINGTON (CNN) -- The U.S. Supreme Court on Friday expanded its review of the Bush administration's war on terror when it agreed to hear the case of a U.S.-born man captured during the fighting in Afghanistan and held incommunicado and without charges.

The justices said they would consider the appeal from Yaser Esam Hamdi, whom the U.S. government has labeled an enemy combatant ineligible for ordinary legal protections and a danger to the United States.

Hamdi's case tests the legal and constitutional rights of U.S. citizens captured in the U.S.-led war on terrorism, and raises questions about the balance between security and liberty. ([Related story](#))

It is the second major terrorism-related case the high court will hear this term.

Friday's announcement by the Supreme Court is another in a recent series of legal setbacks for the Bush administration in terrorism cases. The White House had strongly urged the high court to stay out of the Hamdi case, or delay it pending an appeal in the similar case of another U.S.-born terrorism suspect.

Last month appeals courts in San Francisco and New York issued rulings



Yaser Hamdi, center, is shown being captured in Afghanistan.

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SUPREME COURT RULINGS

- Petition for Writ of Certiorari

that challenged the Bush administration's authority with alleged enemy combatants. ([2nd U.S. Circuit ruling](#)) ([9th U.S. Circuit ruling](#))

In November the Supreme Court agreed to hear two appeals over whether hundreds of terrorist suspects in secret custody are being held unlawfully. ([Full story](#))

Parents of four detainees brought the first appeal accepted by the high court in November. Shafiq Rasul and Asif Iqbal are British citizens, and David Hicks and Mamdouh Habib are from Australia. Hicks is one of six detainees President Bush has recommended face military tribunals.

Hamdi attorney argues for U.S. civil court

Hamdi's attorney had argued his client had a right to hear any charges against him in a U.S. civil court. He was captured in 2001 on the battlefield in Afghanistan. He was initially held at the U.S. Navy base at Guantanamo Bay, Cuba, but later was transferred to a Navy brig in Charleston, South Carolina.

The Pentagon said recently it had finished its interrogation of Hamdi and had agreed to allow a federal public defender to meet with him for the first time.

The administration won its argument in a lower court that Hamdi may be held indefinitely and without the usual legal rights due to U.S. citizens, and wanted that ruling to stand.

Earlier this week, U.S. Solicitor General Theodore Olson asked the justices to put off consideration of the Hamdi case, at least until the government finishes a hurry-up appeal in the similar case of Jose Padilla, a former gang member seized in Chicago in an alleged plot to detonate a radioactive "dirty bomb." Padilla was declared an enemy combatant and, like Hamdi, eventually transferred to the South Carolina naval brig.

The administration plans an appeal in the Padilla case by January 20, and had suggested that the justices consider the two cases together. ([Full story](#))

The court did not address that request in

[Hamdi v. Rumsfeld, Oct. 1, 2003](#)

(FindLaw, PDF)

- Government's opposition to petition for writ of cert. [Hamdi v. Rumsfeld, Dec. 1, 2003](#) (FindLaw, PDF)

- [Hamdi's supplemental brief, Jan. 5, 2004](#) (FindLaw, PDF)

- [Government's supplemental brief, Jan. 7, 2003](#) (FindLaw, PDF)

TERROR CASES

Pending cases at the Supreme Court related to the government's fight against terrorism:

ENEMY COMBATANT: Whether the government is unconstitutionally holding Yaser Esam Hamdi in a Navy brig in South Carolina, without most legal rights. The Supreme Court says it will consider the appeal. The case is Hamdi v. Rumsfeld, 03-6696.

GUANTANAMO BAY: Whether hundreds of detainees in the U.S. terrorism prison at Guantanamo Bay, Cuba, may challenge their treatment in American courts. The government won in a lower court. The cases are Rasul v. Bush, 03-334, and Al Odah v. United States, 03-343. Oral arguments will be in March or April.

SECRETY: Whether the legal case of an immigrant in Florida was improperly shrouded in secrecy. The court has asked the Bush administration to respond to the appeal of a waiter from Algeria who challenged his detention. ([Full story](#)) The case is M.K.B. v. Warden, 03-6747.

IMMIGRANT ROUNDUPS:

Whether the government must disclose information about more than 700 immigrants arrested in the months after the terror attacks. The case is Center for National Security Studies v. Department of Justice, 03-472. The justices are expected to announce as early as Jan. 12 if they will consider appeal.

Source: *The Associated Press*

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its brief order granting review in the Hamdi case, according to The Associated Press. It is not clear now whether the court will also agree to hear the Padilla appeal when it comes, the AP reported.

The two cases raise slightly different constitutional issues, because Hamdi was captured abroad and Padilla was picked up on U.S. soil.

The Hamdi case is expected to be argued in April, with a ruling by late June. There was no immediate reaction from the Justice Department, which is opposing Hamdi's appeal.

The case is Hamdi v. Rumsfeld (03-6696).

CNN Producer Bill Mears contributed to this report.

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